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**ROBERT L. YOUNG**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

11 ROBERT L. YOUNG,

12 Plaintiff,

13 | VS.

14 ILLINOIS UNION INSURANCE  
COMPANY; ACE WESTCHESTER  
15 SPECIALTY CLAIMS; and DOES 1  
through 50, inclusive,

### Defendants.

No. C 07-05711 SBA

**[PROPOSED] ORDER GRANTING  
PARTIAL SUMMARY JUDGMENT**

**DATE:** 8/26/08  
**TIME:** 1:00 p.m.  
**CTRM:** 3

**[FRCP 56(a) and (b)]**

19 Plaintiff ROBERT L. YOUNG's Motion for Partial Summary Judgment  
20 came on regularly for hearing with counsel for Plaintiff and Defendant present in  
21 Court. The Court, having reviewed the moving and opposing papers, and having  
22 heard argument from counsel, hereby rules as follows:

23 Plaintiff's motion for partial summary judgment on the duty to defend issue  
24 is GRANTED. IUI's Policy promised Young that it would defend any Claim even  
25 if the allegations were groundless, false, or fraudulent. Under the Policy, "Claim"  
26 means any written or oral demand for damages or other relief against TRI and the  
27 directors and officers. The Raybern Cross-Complaint is a Claim as that term is  
28 defined by the Policy.

In order to obtain partial summary judgment of an insurer's duty to defend, Plaintiff need only establish that there is a triable issue of fact on the insurer's coverage defense. *Maryland Casualty Co. v. National American Ins. Co.* (1996) 48 Cal.App.4th 1822, 1832. Because Plaintiff is the moving party, he has the initial burden of establishing a potential for coverage. See *Montrose Chem. Corp. v. Superior Court.*, (1993) 6 Cal. 4th 287, 300; *Vann v. Travelers Cos.*, (1995) 39 Cal. App. 4th 1610, 1614. The Raybern Cross-Complaint makes allegations that establish a potential for coverage.

Once the insured makes the *prima facie* showing, the insurer faces the same burden it would encounter if it were the moving party – to prove there is no possibility of coverage. See *id.* "In other words, the insured need only show that the underlying claim may fall within policy coverage; the insurer must prove it cannot." Vann, 39 Cal. App. 4th at 1614.

14 In opposing the motion, it is the Defendants' burden to conclusively negate  
15 coverage; that is, to establish its coverage defense as a matter of law. Defendants'  
16 have failed to make this showing. Accordingly, Plaintiff is entitled to partial  
17 summary judgment as to the duty to defend.

18 DATED: \_\_\_\_\_

## UNITED STATES DISTRICT JUDGE

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